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Written statement* submitted by the World Muslim Congress, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[27 July 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Right to self determination of people of Jammu Kashmir

The ratification of the United Nations Charter in 1945 at the end of World War II placed the right of self-determination into the framework of international law and diplomacy.

United Nations charter Chapter 1, Article 1, part 2 states that purpose of the UN Charter is: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace. Article 1 in both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) reads: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. "

The United Nations Universal Declaration of Human Rights article 15 states that everyone has the right to a nationality and that no one should be arbitrarily deprived of a nationality or denied the right to change nationality.

The International Court of Justice refers to the right to self-determination as a right held by people rather than a right held by governments alone. . The right to self-determination is indisputably a norm of jus cogens. Jus cogens norms are the highest rules of international law and they must be strictly obeyed at all times. Both the International Court of Justice and the Inter-American Commission on Human Rights of the Organization of American States have ruled on cases in a way that supports the view that the principle of self-determination also has the legal status of erga omnes. The term "erga omnes" means "flowing to all." Accordingly, ergas omnes obligations of a State are owed to the international community as a whole: when a principle achieves the status of erga omnes the rest of the international community is under a mandatory duty to respect it in all circumstances in their relations with each other.

People of Jammu Kashmir were promised right to self determination by no less an authority than United Nations security council in its resolutions 47 (1948) of 21 April 1948, 51 (1948) of 3 June 1948 and 80 (1950) of 14 March 1950 and the UNCIP resolutions of 13 August 1948 and 5 January 1949, that the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations. These resolutions were agreed upon by the parties to dispute namely India and Pakistan.

Denial of right to self determination to People of Jammu Kashmir by worlds so called largest democracy has lead to a regime of human rights violation. India is unwilling to allow the people of Kashmir to express their wishes freely and democratically. A democracy that is shy of allowing the people to exercise the right to self-determination is a contradiction in terms.

Even after 68 years after the United Nations Security Council called for plebiscite, India continues to maintain its hold over occupied Jammu Kashmir by force and fraud. Over seven hundred thousand strong army is engaged in gross and systematic human rights violations. During last 25years over one hundred thousand people of all ages and sex have been killed, over 10,000 Kashmir Youth have been subjected to enforced disappearances and thousand incarcerated. Torture, harassment, arbitrary detentions and custodial killings are endemic. Rape has been systematically used as an instrument of War. Peaceful protest and peaceful assemblies of people are being met with brute force. The political leaders of resistance movement are often put under house arrest or detained under notorious legislation called Jammu Kashmir public safety act (JKPSA). Armed forced are provided blanket impunity by the enactment of another draconian law called Jammu Kashmir Armed Forces Special Powers Act of 1990 JK(AFSPA). The armed forces are given the powers up to shoot o kill.

To understand this regime of blanket immunity enjoyed by the forces and its drastic fallout in Kashmir, a recently released study Alleged Perpetrators: Stories of Impunity in J&K by the International People's Tribunal on Human Rights and Justice in Indian-Administered Kashmir (IPTK) and the Association of Parents of Disappeared Persons (APDP) is insightful. By naming the alleged perpetrators of human rights violations in J&K, the report emphasizes the context of entrenched impunity within which the Indian security forces, including the local police, continue to operate in the region. A series of news reports by various international and local human rights organizations, including the

Amnesty International, United States department report have outlined the constant state of exception of J&K, where phrases like the "rule of law", "accountability", "and judicial process", or "human rights" have no meaning.

The report Alleged perpetrators has documented 214 cases to establish how J&K continues to operate in a constant state of exception under various emergency laws that have severe consequences for the local population, most notoriously an almost complete doing away with fundamental guarantees including the right to life, and freedom of speech and expression.

70 page report of Amnesty International, "Denied; Failure in accountability for human rights violations by the security forces personnel's in Jammu Kashmir." documents obstacles to justice for victims of human rights violations existing in both law and practice in Jammu and Kashmir, and shows how the government's response to reports of human rights violations has failed to deliver justice for several victims and families. It focuses on the culture of impunity that pervades in Kashmir because of the enactment of the draconian law Armed forces Special powers act. In its report Amnesty International India analyzed government and legal documents related to over 100 cases of human rights violations committed between 1990 and 2013, and interviewed families of victims, their lawyers, journalists, academics, civil society activists, and state and central authorities.

On 19 June, 2015 Special Rapporteur presented a fallow up report to the United Nations Human Rights Council. This report exposes Indian arrogance and its non seriousness towards the United Nations human rights mandate holders. Special Rapporteur notes that India has taken few steps but those too hare lingering in legislative bodies. This report also focuses on the failure of India in preventing extrajudicial killings and to ensure accountability. It further says, often guidelines provided by the courts or the National Human Rights Commission and recommendations by commissions of inquiry remain on paper with little or no implementation on the ground. Impunity continues to prevail with various legislative provisions and practices that hinder full and proper accountability. The result is that vulnerable persons, including women, marginalized communities, human rights defenders, victims and witnesses, continue to remain at risk of violence, often resulting in death. Special Rapporteur also noted the disproportionate use of force by law enforcing agencies which often becomes the cause of death during demonstrations and makes a special reference to use of forces against demonstrators in Jammu Kashmir.

US state department report raises questions of the restrictions on the freedom of assembly and association and press in Indian occupied Kashmir and documents incidents when state uses arbitrary detentions, house arrests and imposition of curfew and other restrictions to restrict the freedom of movement of the leaders of the political decent.

The Public Safety Act, which applies only in Jammu and Kashmir, permits state authorities to detain persons without charge or judicial review for as long as two years without visitation from family members. Detainees are allowed access to a lawyer during interrogation, but police in Jammu and Kashmir routinely employed arbitrary detention and denied detainees, particularly the destitute, access to lawyers and medical attention.

The common finding in all the three reports in that the lax of accountability and enactment of draconian laws facilitates human rights violations. These reports recommend that India should repeal all those laws which are in contravention to international standards and establish a mechanism of accountability so that all those are brought to just who are responsible for heinous crimes

The UN has a direct role and responsibility to safe guard the rights of the people of Jammu Kashmir and enables the people of Jammu and Kashmir to exercise their right to self-determination. Therefore this organization calls on United Nations Human Rights council; a) to impress upon government of India to put an end to abuses of human rights, b) To start an impartial investigation to all human rights violations, including cases of enforced disappearance, extrajudicial killings and rape to bring all the perpetrators to justice. C) Repeal all draconian laws that facilitate human rights violations and provide impunity to armed forces. D) To create a conducive atmosphere for the implementation of UN resolutions to enable people of Jammu Kashmir to exercise their right to self-determination. In conclusion UN must discharge this responsibility and India and Pakistan must implement the UN Security Council resolutions in accordance with article 25 of the U.N. Charter.